IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1069 of 2005

For Approval and Signature:
HONOURABLE MR.JUSTICE J.R.VORA
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE STATE OF GUJARAT - Appellant(s)
Versus
JUGALKISHOR NANDLAL GHAI & 2 - Opponent(s)

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Appearance :
MR IM PANDYA ADDL.PUBLIC PROSECUTOR for Appellant(s) : 1,
None for Opponent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE M.R. SHAH

Date : 08/10/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.R. SHAH)

1. Present appeal is preferred by the State under sec.378 of the Code of Criminal Procedure against the judgement

and order delivered by the learned Additional Sessions Judge and Special Atrocities Fast Track Court No.8, Bharuch dtd.15/12/2004 in Special Atrocities Case No.20 of 2003, whereby the present respondents – original accused of the aforesaid Special Case came to be acquitted by the trial court for the charges levelled against them under sections 323, 325, 504,114 of Indian Penal Code read with sec.135 of Bombay Police Act and read with sec.3(1)(1O) of Prevention of Atrocities on Schedule Caste and Schedule Tribe.

2. Record and proceedings of the case is called from the learned trial court and Mr.Pandya, learned Additional Public Prosecutor has also provided extra copies of the evidence recorded during the trial and produced the documents on record.

3. We have gone through the judgement and order passed by the learned trial court, impugned in the present appeal as well as the record and proceedings and the evidence recorded during the trial and the documents produced on record.

4. According to the prosecution case, the incident occurred on 13/8/2002 at about 12.00 hours at Panchbatti area, Near Gurunanak Store, Bharuch for which the

complainant Manharbhai Maganbhai Parmar filed First Information Report before the Bharuch City Police Station being I-CR No.164 of 2002 against the accused persons for the offences punishable under sections 323, 325, 504, 114, 114 of Indian Penal Code, under sec.135 of Bombay Police Act and under sec.3(1)(10) of Prevention of Atrocities on Schedule Caste and Schedule Tribe Act, alleging inter-alia that the accused Nos.1 and 2 had given kick and fist blows and accused No.3 had given blow of iron pipe on left hand wrist of the complainant and thereby caused severe injuries. It was further the case of the prosecution that the respondents accused also caused injuries to the wife of the complainant named Indumatiben by pushing her down. It was further the case of the prosecution that the respondent accused had given filthy abuses to the complainant by using the words with clear intention to insult the complainant in public at large and therefore, committed the offence.

5. The investigation was carried out by the concerned investigating officer and at the end of the investigation, chargesheet came to be submitted in the court of learned Chief Judicial Magistrate, Bharuch and a Criminal Case was registered. The case was committed to the

Court of Sessions as per the provisions of sec.207 of the Code of Criminal Procedure and was registered as Sessions Case No.20 of 2003.

6. The learned Additional Sessions Judge and Special Judge (Atrocities) Fast Track Court No.8, framed Charge against all the three respondents – accused on 12/3/2004 at Ex.5, to which the respondents accused pleaded not guilty and therefore, all the respondents accused were put to trial.

7. Thereafter, the prosecution examined as many as 14 witnesses and produced on record voluminous documents to prove its case. On prosecution evidence being over, learned trial judge brought to the notice of each of the respondents the incriminating circumstances appearing against them in the evidence of the prosecution. The statements of the respondents accused were recorded under sec.313 of the Code of Criminal Procedure, wherein the defence of each of the respondent was of total denial. The learned trial judge, after hearing prosecution and the defence witnesses, came to the above conclusion and acquitted all the respondents accused and hence this appeal.

8. We have gone through the evidence recorded during the trial. We have appreciated the evidence to assess the

reasons assigned by the learned trial judge for the acquittal. We have considered the vital features of the matter and reasonable probabilities arising out of the circumstances. We have taken into consideration the contentions raised by the appellant. We have taken threadbare scrutiny of the reasons assigned by the learned trial judge for acquittal.

9. On the prosecution side, 14 witnesses came to be examined. The prosecution has examined [1] Manharbhai Maganbhai Parmar – original complainant at Ex.15 [2] Indumatiben wife of Manharbhai Maganbhai Parmar – witness at Ex.17 [3] Yogeshbhai Kanaiyalal Pandya – witness at Ex.20 [4] Arvindbhai Jayantilal – Panch Witness at Ex.22 [5] Taufik Abdul Gaffar – witness at Ex.24 [6] Dakshaben Maheshbhai – witness at Ex.25 [7] Dr.Jyotiben Ashokkumar Gupta – witness at Ex.29 [8] Jethalal Bababhai Parmar – witness at Ex.31 [9] Yasinbhai Yakubbhai – witness at Ex.33 [10] Durjansinh Natvarsinh Raulji ASI at Ex.34 [11] Gulam-Hussain Yusufmiyan Malek - witness at Ex.35 [12] Digvijaysinh Dilipsinh Chauhan – witness at Ex.39 [13] Ashokbhai Mahadevbhai Pathak – witness at Ex.45 and [14] Yakub Haji Umarji Patel – witness at Ex.50.

10. On prosecution side, documentary evidences such as original complaint, panchnama, inquest panchnama, injury certificate, copy of the station diary, statement of bank Account etc., came to be produced. Statement of accused persons also came to be recorded at Exs.6 to 8 under sec.313 of the Code of Criminal Procedure. As per the accused persons, the original complainant has quarreled with them for the purpose of some goods and in fact, he has destroyed certain articles in the shop and has abused the accused persons and that as the original complainant has good relation in the police department, the police did not register their complaint as First Information Report and therefore, the accused persons were constrained to file a private complaint in the court of learned Chief Judicial Magistrate, Bharuch, but the police did not submit proper report. However, thereafter, the court held inquiry and took cognizance and a criminal case has been admitted against the complainant being Criminal Case No.8537 of 2004. It was also the case on behalf of the accused persons that in fact, the complainant has beaten the accused No.2 on nose and there was fracture on the nose, however, the complainant has lodged false complaint against them.

11. It was the case on behalf of the prosecution and as per the complainant and his wife that the original complainant has given Rs.50,000 to the accused persons on loan and the accused persons had agreed to deposit the said amount in the Bank Account of the complainant and for that purpose, the prosecution has examined one Dakshaben at Ex.39. However on appreciation of evidence,the learned trial court held that the prosecution has failed to prove that Rs.50,000 was given to the accused persons by way of loan, as alleged. It also appears from the record and the evidence that as per the prosecution and the original complainant the incident has taken place at the shop of the original accused No.1. However, considering the panchnama etc. it has been found that the alleged incident has taken place at the place of the original accused No.2 and not at the shop of the original accused No.1. Therefore, there is contradiction with regard to place of incident. Considering the overall facts and circumstances and on appreciation of evidence, oral as well as documentary, the learned trial court has acquitted all the accused persons for the offences punishable under sections 323, 325, 504 read with sec.114 of Indian Penal Code, under sec.135 of

Bombay Police Act read with sec.3(1)(10) of Prevention of Atrocities on Schedule Caste and Schedule Tribe Act.

12. The original complainant is examined at Ex.15 and as per the complainant, he has given Rs.50,000 to the original accused No.1 on loan. However, in the cross-examination, he has admitted that he has no evidence to prove that he has given Rs.50,000 to the original accused No.1 on loan. Similarly, Indumatiben wife of the complainant was also examined at Ex.17 and according to her also, Rs.50,000 was given to the original accused No.1 on loan before two years. However, she has also admitted that she has no evidence to prove that Rs.50,000 was given to the original accused No.1. Even it is also found that there is contradiction in respect to the place of the incident and as per the complainant, the incident has taken place at the shop of original accused No.1, however, considering the Panchnama as well as cross-examination of the complainant, the alleged incident has taken place at the shop of the original accused No.2 and not at the shop of the accused No.1. Thus, considering the above evidence, the learned trial court came to the conclusion that the prosecution has failed to prove the case against the accused persons and acquitted all the accused persons.

13. This being an appeal against the acquittal, the scope of the appeal is limited and well explained by the Apex Court in AJIT SAVANT MAJAGAVI vs. STATE OF KARNATAKA, as reported at (1997) 7 SCC 110, in para – 16 as under :

(1) In an appeal against an order of acquittal, the High Court possesses all the powers, and nothing less than the powers, it possesses while hearing an appeal against the order of conviction.

(2) The High Court has the power to reconsider the whole issue, reappraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial court, if the said findings are against the weight of the evidence on record, or in other words, perverse.

(3) Before reversing the finding of acquittal, the High Court has to consider each ground on which the order of acquittal was based and to record its own reasons for not accepting those grounds and not subscribing to the view expressed by the trial court that the accused is entitled to acquittal.

(4) In reversing the finding of acquittal, the High Court has to keep in view the fact that the

presumption of innocence is still available in favour of the accused and the same stands fortified and strengthened by the order of acquittal passed in his favour by the trial court.

(5) If the High Court, on a fresh scrutiny and reappraisal of the evidence and other material on record, is of the opinion that there is another view which can be reasonably taken, then the view which favours the accused should be adopted.

(6) The High Court has also to keep in mind that the trial court had the advantage of looking at the demeanour of witnesses and observing their conduct in the court especially in the witness box.

(7) The High Court has also to keep in mind that even at that stage, the accused was entitled to benefit of doubt. The doubt should be such as a reasonable person would honestly and conscientiously entertain as to the guilt of the accused.

14. In view of above, while we scanned the reasons advanced by the Trail Judge, we have no hesitation to come to the conclusion that the view taken by the Trail Court is possible and probable from the evidence recorded during the trial. By no stretch of reasoning, it could be said that the view taken by the Trial Court is perverse, manifestly erroneous, palpably wrong or

demonstrably unsustainable. In appeals against the order of acquittal, even if legitimate second view is possible, the order of acquittal cannot lightly be interfered with unless the conclusions arrived at by the Trial Court are found by the appellate court perverse, manifestly erroneous, palpably wrong and demonstrably unsustainable.

As held by the Hon'ble Supreme Court in the recent decision in the case of State of U.P. Vs. Ramvirsing, reported in 2007 AIR SCW 5553, though there is no embargo on the appellate court to review the evidence upon which the order of acquittal is based, generally the order of acquittal shall not be interfered with because presumption of innocence of the accused is further strengthened by acquittal. It is further observed by the Hon'ble Supreme Court in the said decision that the principle to be followed by the appellate court considering the appeal against the judgement of the acquittal is to interfere only when there are compelling and special reasons for doing so.

15. In view of the above, while we scanned the reasons

advanced by the learned trial court, we have no hesitation to come to the conclusion that the view taken by the trial court is possible and palpably from the evidence recorded by the trial court by not stretch of reasoning it could be said that the view taken by the trial court is perverse manifestly erroneous palpably wrong or demonstrable. In appeal against the order of acquittal even if legitimate second view is possible, the order of acquittal cannot be lightly be interfered, unless the conclusion arrived at by the trial court is found by the appellate court perverse, manifestly erroneous palpably wrong and demonstrable unsustainable.

16. For the reasons stated above, the judgement and order impugned in the appeal warrants no interference. The present appeal deserves dismissal and the same is accordingly dismissed.

[J.R. VORA, J.]

[M.R. SHAH, J.]

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